



366657



"Winters, Karen"
 <KWinters@ssd.com>
 06/15/2006 12:30 PM

To Alan.Tenenbaum@usdoj.gov, "Brooks, Patrick J."
 <PBrooks@ssd.com>, Elise.Feldman@usdoj.gov, Catherine
 Garypie/R5/USEPA/US@EPA, PierceJC@michigan.gov,
 cc Catherine Garypie/R5/USEPA/US@EPA, Maria
 Cintron-Silva/DC/USEPA/US@EPA, TKreller@milbank.com,
 LPutman@milbank.com, "Lerner, Stephen D."
 bcc

Subject RE: CTA

Alan-the first two issues outlined below have been addressed in my prior email. I anticipate discussing the increase of the 15% holdback with you and Elise later today. With respect to any revisions to the Findings of Fact and Conclusions of Law filed by Debtors, please note that we have not represented these to the Court as agreed Proposed Findings of Fact and Conclusions of Law, simply as Debtors Proposed Findings of Fact and Conclusions of Law. With regard to the Proposed Finding of Fact and Conclusions of Law with respect to the funding of the Custodial Trust for the Ohio sites, I'm certain that the Court will address any inconsistency in what has been proposed with what the Court ultimately concluded. Thanks.

-----Original Message-----

From: Alan.Tenenbaum@usdoj.gov [mailto:Alan.Tenenbaum@usdoj.gov]
 Sent: Wednesday, June 14, 2006 6:18 PM
 To: Brooks, Patrick J.; Elise.Feldman@usdoj.gov;
 garypie.catherine@epamail.epa.gov; PierceJC@michigan.gov;
 monroeb@michigan.gov; Betsey.Streuli@deq.state.ok.us;
 ebessey@kdhe.state.ks.us; JMorgan@atg.state.il.us; vpowers@szd.com
 Cc: Garypie.Catherine@epamail.epa.gov;
 Cintron-Silva.Maria@epamail.epa.gov; TKreller@milbank.com;
 LPutman@milbank.com; Lerner, Stephen D.; Winters, Karen;
 ssamuels@szd.com; CGIBBONS@szd.com; wvawest@ameritech.net
 Subject: RE: CTA

In section 3.2a, could you please delete the qualifier "QA/QC"?

We feel strongly that the 15% should be changed to 20% in light of the new unanticipated costs and, if we need to, we are willing to let the Court decide this issue. However, in the spirit of compromise and trying to get this done with once and for all, we would be reluctantly be willing to give this issue up if we can get some cooperation from the Debtors so we don't have to go to the Court on issues that the parties should be able to resolve in good faith among themselves. If we are going to the Court anyway we might as well let it decide the 20% issue as well. These other issues that we believe should be easily resolved are:

1. Paragraph 126 of FFCOL. Delete "applicable non-bankruptcy law." I looked for any cases saying that 1129a2 (which speaks about bankruptcy law, not non-bankruptcy law) required such a finding and found none. If you have any, please let me know. There isn't any record before the Court on compliance with all non-bankruptcy law by debtors throughout the case; there is no way this Judge is going to make such a vague finding (it would even cover criminal law!); and there is no requirement

that Confirmation Orders make such a finding. It seems like this should be an issue that reasonable people should be able to resolve without involving the Court or forcing us to file a brief.

2. Paragraph 72 of FFCOL. After "are" and before "sufficient," add "for purposes of settlement". This conforms to our agreement on this issue.

3. Paragraphs relating to Ohio -- the Court's ruling should speak for itself; many of these findings and conclusions are contrary to the Court's ruling. These should be removed and replaced by reference to the Court's ruling (if needed).

-----Original Message-----

From: PBrooks@ssd.com [mailto:PBrooks@ssd.com]
Sent: Tuesday, June 13, 2006 6:34 PM
To: Feldman, Elise (ENRD); Tenenbaum, Alan (ENRD); vpowers@szd.com; Betsey.Streuli@deq.state.ok.us; ebessey@kdhe.state.ks.us; PierceJC@michigan.gov; JMorgan@atg.state.il.us; garypie.catherine@epamail.epa.gov; monroeb@michigan.gov
Cc: SLerner@ssd.com; TKreller@milbank.com; KWinters@ssd.com; LPutman@milbank.com; ssamuels@szd.com; CGIBBONS@szd.com; wvawest@ameritech.net; Garypie.Catherine@epamail.epa.gov; Cintron-Silva.Maria@epamail.epa.gov
Subject: RE: CTA

Attached is the CTA in track changes format, which I believe reflects all comments from today regarding the CTA and our discussions related thereto. Please note that I have bracketed language that I would propose be added to the CT's proposed language to section 5.3. Let me know if you have additional comments, or otherwise let me know you are satisfied with the document so that we can proceed with filing it with the Court, which we would like to do ASAP.

Further, if you have comments to the Settlement Agreements, please direct them to Karen Winters as I will be unavailable for a couple of days and will only be checking emails after hours.

Regards,

Patrick Brooks

From: Victoria Powers [mailto:vpowers@szd.com]
Sent: Tue 6/13/2006 6:03 PM
To: Brooks, Patrick J.; Alan.Tenenbaum@usdoj.gov; Elise.Feldman@usdoj.gov; Betsey.Streuli@deq.state.ok.us; ebessey@kdhe.state.ks.us; PierceJC@michigan.gov; JMorgan@atg.state.il.us; garypie.catherine@epamail.epa.gov; monroeb@michigan.gov
Cc: Lerner, Stephen D.; TKreller@milbank.com; Winters, Karen; LPutman@milbank.com; Stephen Samuels; M. Colette Gibbons; wvawest@ameritech.net; Garypie.Catherine@epamail.epa.gov; Cintron-Silva.Maria@epamail.epa.gov
Subject: RE: CTA

Here is proposed language:

2.1 e) After consultation with the applicable Lead Agency or Lead Agencies, the Custodial Trustee may, but shall not be obligated to, obtain insurance or other similar financial instrument-the cost of which shall be paid out of the relevant Custodial Trust Accounts or Custodial Trust Accounts-to cover or supplement all or part of the Environmental Costs at one or more Properties. In addition, the Custodial Trustee may, but shall not be obligated to, obtain insurance-the cost of which shall be paid out of the Administration Custodial Trust Account-for the benefit of the Custodial Trust Parties (as defined herein) and the Custodial Trust in connection with and in any way related to their roles, duties and obligations under this Agreement, the Settlement Agreements, the Plan, the Confirmation Order, and related documents, including, without limitation, any leases, in such amounts and on such terms as the Custodial Trustee may, in his discretion, determine for (i) personal injury, property damage and wrongful death and; (ii) investigation, remediation, response, closure and post-closure associated with any property that may be affected by environmental conditions at or emanating from the Properties.

Jurisdiction Language for 5.3

If the parties to the dispute are unable to resolve the dispute within the informal dispute resolution period, any party to the dispute may file a motion with the Court, and, solely if the Court determines that it does not have or chooses not to exercise jurisdiction to determine the dispute, with a Federal court of competent jurisdiction, for resolution of that dispute, and the resulting final order shall bind all Parties, Beneficiaries and other Persons; provided, however, that if all the parties to the dispute agree, an alternative tribunal or mechanism may be used to resolve their dispute; provided further, that any dispute between the Custodial Trustee and an Environmental Agency regarding the modification, disapproval, or other action of the Environmental Agency regarding any submittal or request for approval by the Custodial Trustee shall be resolved in accordance with the existing state appellate review procedures, if available.

-----Original Message-----

From: Brooks, Patrick J. [mailto:PBrooks@ssd.com]
Sent: Tuesday, June 13, 2006 2:42 PM
To: Alan.Tenenbaum@usdoj.gov; Elise.Feldman@usdoj.gov;
Betsey.Streuli@deq.state.ok.us; ebessey@kdhe.state.ks.us;
PierceJC@michigan.gov; JMorgan@atg.state.il.us;
garypie.catherine@epamail.epa.gov; monroeb@michigan.gov
Cc: Lerner, Stephen D.; TKreller@milbank.com; Winters, Karen;
LPutman@milbank.com; Stephen Samuels; Victoria Powers; M. Colette
Gibbons; wvawest@ameritech.net; Garypie.Catherine@epamail.epa.gov;
Cintron-Silva.Maria@epamail.epa.gov
Subject: RE: CTA

We are having a call on the CTA at 2:45 with the CT's counsel. Anyone is free to join. Use the dial in below:

866 740 1260

479 8370

From: Alan.Tenenbaum@usdoj.gov [mailto:Alan.Tenenbaum@usdoj.gov]
Sent: Tue 6/13/2006 11:21 AM
To: Elise.Feldman@usdoj.gov; Betsey.Streuli@deq.state.ok.us;
ebessey@kdhe.state.ks.us; PierceJC@michigan.gov;
JMorgan@atg.state.il.us; garypie.catherine@epamail.epa.gov;
monroeb@michigan.gov; Brooks, Patrick J.
Cc: Lerner, Stephen D.; TKreller@milbank.com; Winters, Karen;
LPutman@milbank.com; ssamuels@szd.com; vpowers@szd.com;
CGIBBONS@szd.com; wvawest@ameritech.net;
Garypie.Catherine@epamail.epa.gov; Cintron-Silva.Maria@epamail.epa.gov;
TKern@ag.state.oh.us
Subject: RE: CTA

Patrick:

I am still gathering comments but attached are my three comments so far. These comments are not meant to suggest that any of michigan's comments are not meritorious (some of them are good although others can be handled in their Settlement Agreement -- have you sent out a draft yet?); we are letting them deal with you on their comments. We are also going let Ohio deal with you on the Prevailing Party issue under Ohio law. We will provide any further comments today. Thanks. Alan.

-----Original Message-----

From: PBrooks@ssd.com [mailto:PBrooks@ssd.com]
Sent: Monday, June 12, 2006 2:41 PM
To: Feldman, Elise (ENRD); Tenenbaum, Alan (ENRD);
Betsey.Streuli@deq.state.ok.us; ebessey@kdhe.state.ks.us;
PierceJC@michigan.gov; JMorgan@atg.state.il.us;
garypie.catherine@epamail.epa.gov; monroeb@michigan.gov

Cc: SLerner@ssd.com; TKreller@milbank.com; KWinters@ssd.com;
LPutman@milbank.com; ssamuels@szd.com; vpowers@szd.com; CGIBBONS@szd.com

Subject: CTA
Importance: High

<<Redline.doc>> Counsel:

Attached is a revised version of the CTA in redline format, which I believe resolves the issues discussed on Friday. You will see that we modified Section 2.6 to require the Custodial Trustee to obtain the "buyer's agreement to complete the Environmental Actions consistent with

this Agreement [the CTA] and any applicable Settlement Agreements." This limitation on the Custodial Trustee's flexibility to conduct a sale

was difficult to obtain and a significant concession of the Committee and I hope the parties recognize it as such. With the resolution of this provision I think we can quickly move to finalizing the document.

Further, based on conversations with the Custodial Trustee and certain comments of various of the States, in an effort to avoid conflicts between documents, we have:

i. moved the Environmental Information provision from the SAs into the

CTA,

ii. deleted the Owner/Operator provision from the SA and have amended Section 5.2 to pick up those concepts not already contained in the CTA to avoid conflicts and confusion;

iii. moved the Dispute Resolution and Turnover of Funding provisions from the SAs to the CTA to have a single clear procedural approach to disputes related to the CTA and SAs; and

iv. consolidated SAs' Cooperation provision into CTA's Cooperation provision.

With this, I hope we can obtain final approval from all parties concerned on the CTA ASAP and move forward with conclusion of the settlement agreements. I will be circulating revised settlement agreements to the parties consistent with these changes and other specific issues we have discussed to the relevant parties in short order

and hope to wrap these up on our scheduled calls.

As we have discussed with everyone, once the documents are finalized we understand that you will be expediting final consideration and approval of the documents and we appreciate all efforts in this regard.

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